

B-Engrossed
House Bill 3043

Ordered by the Senate May 12
Including House Amendments dated March 20 and Senate Amendments
dated May 12

Sponsored by Representatives NERON, HUDSON, REYNOLDS, Senators MEEK, PATTERSON; Representatives ANDERSEN, BOWMAN, DEXTER, FAHEY, GAMBA, GOMBERG, GRAYBER, HARTMAN, HOLVEY, LIVELY, MCLAIN, NELSON, NGUYEN H, NOSSE, PHAM H, PHAM K, WALTERS, Senators CAMPOS, DEMBROW, GELSER BLOUIN, GOLDEN, MANNING JR, SOLLMAN, WOODS (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises provisions relating to chemicals in children's products.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to chemicals in children's products; creating new provisions; amending ORS 431A.253,
3 431A.255, 431A.258, 431A.263 and 431A.265; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 431A.253 is amended to read:

6 431A.253. As used in ORS 431A.253 to 431A.280:

7 (1) "Chemical" means:

8 (a) A substance with a distinct molecular composition and the breakdown products of the sub-
9 stance that form through decomposition, degradation or metabolism.

10 (b) A group of structurally related substances and the breakdown products of the substances
11 that form through decomposition, degradation or metabolism.

12 (2)(a) "Children's cosmetics" means products that are intended to be rubbed, poured, sprinkled
13 or sprayed on, introduced into or otherwise applied to the human body or any part thereof for
14 cleansing, moisturizing, beautifying, promoting attractiveness or altering the appearance.

15 (b) "Children's cosmetics" does not mean soap, dietary supplements or food and drugs approved
16 by the United States Food and Drug Administration.

17 (3)(a) "Children's product" means:

18 (A) Any of the following products that are made for, marketed for use by or marketed to chil-
19 dren under 12 years of age:

20 (i) A product designed or intended by the manufacturer to facilitate sucking, teething, sleep,
21 relaxation, feeding or drinking.

22 (ii) Children's clothing and footwear.

23 (iii) Car seats.

24 (iv) Children's cosmetics.

25 (v) Children's jewelry.

26 (vi) Toys.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (B) Any component part of a product specified in subparagraph (A) of this paragraph.

2 (b) “Children’s product” does not mean:

3 (A) Athletic shoes with cleats or spikes.

4 (B) Batteries.

5 (C) BB guns, pellet guns and air rifles.

6 (D) Bicycles and tricycles.

7 (E) Chemistry sets.

8 (F) Consumer electronic products, including personal computers, audio and video equipment,
9 calculators, wireless telephones and game consoles, handheld devices that incorporate a video
10 screen and are used to access interactive software, and the associated peripherals.

11 (G) Interactive software intended for leisure and entertainment, such as computer games, and
12 their storage media, such as compact discs.

13 (H) Model rockets.

14 (I) Pocketknives and multitools.

15 (J) Roller skates.

16 (K) Scooters.

17 (L) Sets of darts with metallic points.

18 (M) Slings and catapults.

19 (N) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and bindings.

20 (O) Sporting equipment and accessories, including but not limited to bats, balls, gloves, sticks,
21 pucks, pads, helmets and other protective equipment, weight training and exercise aids, protective
22 eyewear, backpacks and tents, raingear, sport bags and luggage, and golf equipment.

23 (P) Video toys that can be connected to a video screen and are operated at a nominal voltage
24 exceeding 24 volts.

25 (Q) Food and beverages and food and beverage packaging regulated by the United States Food
26 and Drug Administration or the United States Department of Agriculture.

27 **(4) “Class of chemicals” means a group of chemicals that are related or similar based on**
28 **their structure, physical property, radiological property or other factors.**

29 [(4)] **(5)** “Contaminant” means trace amounts of chemicals that are incidental to manufacturing
30 and that serve no intended function in the product component, including but not limited to:

31 (a) Unintended by-products of chemical reactions during the manufacture of the product com-
32 ponent;

33 (b) Trace impurities in feedstock;

34 (c) Incompletely reacted chemical mixtures; and

35 (d) Degradation products.

36 [(5)] **(6)** “De minimis level” means:

37 (a) For a chemical that is an intentionally added chemical, the practical quantification limit; or

38 (b) For a chemical that is a contaminant, a concentration of 100 parts per million.

39 [(6)] **(7)** “Intentionally added chemical” means a chemical in a product that serves an intended
40 function in the product component.

41 [(7)] **(8)** “Manufacturer” means any person that produces a children’s product or an importer
42 or domestic distributor of a children’s product. For the purposes of this subsection, “importer”
43 means the owner of the children’s product.

44 [(8)] **(9)** “Mouthable” means, in describing a children’s product or any part of a children’s
45 product, that an intended use of the product or any part of the product includes being placed in the

1 mouth for any purpose.

2 [(9)] (10) “Practical quantification limit” means the lowest concentration of a chemical that can
3 be reliably measured within specified limits of precision, accuracy, representativeness, completeness
4 and comparability during routine laboratory operating conditions.

5 (11) “Subclass of chemicals” means a group of chemicals within a class of chemicals that
6 likely share the same type and approximate value of a specific toxicological property or other
7 property based upon analysis of:

8 (a) Structure, physicochemical properties, composition, computational bioactivity profiles
9 and toxicokinetics;

10 (b) Mechanism or mode of action, including similarity in eliciting molecular initiating
11 events, key intermediate events and other relevant in vitro data and information; and

12 (c) Other available toxicological and ecotoxicological testing data and information.

13 [(10)] (12) “Trade association” means a membership organization of persons engaging in the
14 same or a similar or related line of commerce, organized to promote and improve business conditions
15 in that line of commerce and not to engage in regular business activities that ordinarily are carried
16 on for profit.

17 **SECTION 2.** ORS 431A.255 is amended to read:

18 431A.255. (1)(a) The Oregon Health Authority shall establish and maintain a list of high priority
19 chemicals of concern for children’s health when used in children’s products. The authority shall in-
20 clude on the list chemicals that are listed on the Washington State Department of Ecology’s Re-
21 porting List of Chemicals of High Concern to Children on July 27, 2015.

22 (b) **The authority may include a class of chemicals on the list. If the authority includes**
23 **a class of chemicals on the list, the authority may exclude from the list specific members**
24 **of the class of chemicals, or a subclass of chemicals, that do not share the same hazards as**
25 **the other members of the class of chemicals.**

26 (2) In establishing by rule the practical quantification limits for chemicals **or classes of**
27 **chemicals** on the list, the authority shall consider guidance developed by the State of Washington
28 and other federal, state and nongovernmental organizations with the applicable expertise.

29 (3) The authority shall post the list of high priority chemicals on its website. For each high
30 priority chemical **or high priority class of chemicals** on the list, the authority shall post:

31 (a) Information regarding the known health impacts associated with exposure to the chemical
32 **or class of chemicals**; and

33 (b) Data collected under ORS 431A.258 in a format that is searchable and accessible to the
34 public.

35 (4) The authority shall review and revise the list of high priority chemicals every three years.
36 In completing the revisions under this subsection, the authority:

37 [(a) *May not add more than five chemicals to the list of high priority chemicals during each*
38 *three-year revision period under this subsection;*]

39 [(b)] (a) Shall consider adding or removing a chemical **or class of chemicals** from the list of
40 high priority chemicals if, after July 27, 2015, the chemical **or class of chemicals** is added to or
41 removed from the Washington State Department of Ecology’s Reporting List of Chemicals of High
42 Concern to Children or a list maintained by another state agency, another state or a federal agency
43 that the authority has identified by rule as a list intended to identify high priority chemicals; and

44 [(c)] (b) May remove a chemical **or class of chemicals** from the list of high priority chemicals
45 if the authority determines that the chemical **or class of chemicals** is no longer being used in

1 children's products.

2 (5) The authority shall update the list of high priority chemicals on its website within one year
3 after the date on which a chemical **or class of chemicals** is added to or removed from the list.

4 **SECTION 3.** ORS 431A.258 is amended to read:

5 431A.258. (1)(a) A manufacturer of a children's product sold or offered for sale in this state that
6 contains a chemical **or member of a class of chemicals** included on the list established and
7 maintained under ORS 431A.255 in an amount at or above a de minimis level shall provide a biennial
8 notice as described in subsection (2) of this section to the Oregon Health Authority by January [1]
9 **31** of each applicable notice year.

10 (b) The first biennial notice required under this section shall be submitted to the authority by
11 January [1] **31** of the year following the year that the chemical contained in the children's product
12 sold or offered for sale in this state is added to the list.

13 (2) The notice required by subsection (1) of this section must contain:

14 (a) The name and Chemical Abstracts Service Registry Number of the chemical contained in the
15 children's product;

16 (b) The product category of the children's product that contains the chemical;

17 (c) A description of the function of the chemical in the children's product;

18 (d) The amount of the chemical used in each unit of the children's product reported as a range
19 rather than an exact amount;

20 (e) The name and address of the manufacturer, and the name, address and telephone number of
21 a contact person for the manufacturer; and

22 (f) Any other information that the manufacturer deems relevant to the appropriate use of the
23 children's product.

24 (3)(a) The authority may enter into reciprocal data sharing agreements with other states in
25 which manufacturers of children's products are required to disclose information related to high pri-
26 ority chemicals of concern for children's health used in children's products. The authority must use
27 the GS1 Global Product Classification system to identify and specify product categories subject to
28 the data sharing agreements. If the authority has entered into a data sharing agreement with an-
29 other state, and a manufacturer has reported the information required in the notice described in
30 subsection (2) of this section to that state, the manufacturer may request that the other state pro-
31 vide the authority with the information in lieu of the manufacturer's direct reporting of the infor-
32 mation to the authority.

33 (b) A manufacturer fulfills the notice requirement of subsection (1) of this section when the au-
34 thority receives the information from the other state and the authority determines that the infor-
35 mation received satisfies the requirements for the notice specified in subsection (2) of this section.

36 (4) In lieu of the manufacturer's providing notice to the authority under subsection (1) or (3) of
37 this section, the authority may require that the notice described in subsection (2) of this section be
38 submitted to the Interstate Chemicals Clearinghouse. The authority by rule shall specify procedures
39 for the provision of such notice by manufacturers to the Interstate Chemicals Clearinghouse.

40 (5)(a) The authority shall grant an exemption to a manufacturer of children's products that ap-
41 plies for an exemption from the notice requirements of this section if the application demonstrates
42 that:

43 (A) The high priority chemical of concern for children's health used in children's products is
44 present in the children's product otherwise subject to the notice requirements of this section only
45 as a contaminant;

1 (B) The manufacturer conducts a manufacturing control program for the contaminant; and

2 (C) The manufacturing control program meets minimum standards for a manufacturing control
3 program as set forth by the authority by rule.

4 (b) The authority shall approve or disapprove an exemption application within 180 days after its
5 submittal. If the authority fails to act within 180 days, the exemption application is deemed ap-
6 proved. If the authority disapproves an exemption application, the manufacturer may submit a re-
7 vised exemption application for consideration within 180 days after the authority's disapproval.

8 (6) A trade association may provide required notices on behalf of its member manufacturers
9 under the provisions of this section.

10 (7) When a manufacturer provides notice to the authority under the provisions of this section,
11 the manufacturer may submit recommendations to the authority regarding technical, financial or
12 logistical support deemed necessary for innovation and green chemistry solutions related to high
13 priority chemicals of concern for children's health used in children's products.

14 **SECTION 4.** ORS 431A.258, as amended by section 3 of this 2023 Act, is amended to read:

15 431A.258. (1)(a) A manufacturer of a children's product sold or offered for sale in this state that
16 contains a chemical or member of a class of chemicals included on the list established and main-
17 tained under ORS 431A.255 in an amount at or above a de minimis level shall provide a biennial
18 notice as described in subsection (2) of this section to the Oregon Health Authority by January 31
19 of each applicable notice year.

20 (b) The first biennial notice required under this section shall be submitted to the authority by
21 January 31 of the year following the year that the chemical contained in the children's product sold
22 or offered for sale in this state is added to the list.

23 (2) The notice required by subsection (1) of this section must contain:

24 (a) The name and Chemical Abstracts Service Registry Number of the chemical contained in the
25 children's product;

26 (b) The **brand name, model and** product category of the children's product that contains the
27 chemical;

28 (c) A description of the function of the chemical in the children's product;

29 (d) The amount of the chemical used in each unit of the children's product reported as a range
30 rather than an exact amount;

31 (e) The name and address of the manufacturer, and the name, address and telephone number of
32 a contact person for the manufacturer; and

33 (f) Any other information that the manufacturer deems relevant to the appropriate use of the
34 children's product.

35 (3)(a) The authority may enter into reciprocal data sharing agreements with other states in
36 which manufacturers of children's products are required to disclose information related to high pri-
37 ority chemicals of concern for children's health used in children's products. The authority must use
38 the GS1 Global Product Classification system to identify and specify product categories subject to
39 the data sharing agreements. If the authority has entered into a data sharing agreement with an-
40 other state, and a manufacturer has reported the information required in the notice described in
41 subsection (2) of this section to that state, the manufacturer may request that the other state pro-
42 vide the authority with the information in lieu of the manufacturer's direct reporting of the infor-
43 mation to the authority.

44 (b) A manufacturer fulfills the notice requirement of subsection (1) of this section when the au-
45 thority receives the information from the other state and the authority determines that the infor-

1 mation received satisfies the requirements for the notice specified in subsection (2) of this section.

2 (4) In lieu of the manufacturer's providing notice to the authority under subsection (1) or (3) of
3 this section, the authority may require that the notice described in subsection (2) of this section be
4 submitted to the Interstate Chemicals Clearinghouse. The authority by rule shall specify procedures
5 for the provision of such notice by manufacturers to the Interstate Chemicals Clearinghouse.

6 (5)(a) The authority shall grant an exemption to a manufacturer of children's products that ap-
7 plies for an exemption from the notice requirements of this section if the application demonstrates
8 that:

9 (A) The high priority chemical of concern for children's health used in children's products is
10 present in the children's product otherwise subject to the notice requirements of this section only
11 as a contaminant;

12 (B) The manufacturer conducts a manufacturing control program for the contaminant; and

13 (C) The manufacturing control program meets minimum standards for a manufacturing control
14 program as set forth by the authority by rule.

15 (b) The authority shall approve or disapprove an exemption application within 180 days after its
16 submittal. If the authority fails to act within 180 days, the exemption application is deemed ap-
17 proved. If the authority disapproves an exemption application, the manufacturer may submit a re-
18 vised exemption application for consideration within 180 days after the authority's disapproval.

19 (6) A trade association may provide required notices on behalf of its member manufacturers
20 under the provisions of this section.

21 (7) When a manufacturer provides notice to the authority under the provisions of this section,
22 the manufacturer may submit recommendations to the authority regarding technical, financial or
23 logistical support deemed necessary for innovation and green chemistry solutions related to high
24 priority chemicals of concern for children's health used in children's products.

25 **SECTION 5.** ORS 431A.263 is amended to read:

26 431A.263. (1)(a) When a manufacturer of children's products sold or offered for sale in this state
27 removes a high priority chemical of concern for children's health used in children's products from
28 a children's product sold or offered for sale in this state that is subject to ORS 431A.258 and sub-
29 stitutes another chemical, the manufacturer must submit a hazard assessment to the Oregon Health
30 Authority that explains how the children's product, and any substitute chemical the children's
31 product contains, is inherently less hazardous than before the substitution was made.

32 (b) When a manufacturer of children's products sold or offered for sale in this state removes a
33 high priority chemical of concern for children's health used in children's products from a children's
34 product as described in [*subsection (1) of this section*] **paragraph (a) of this subsection** and does
35 not substitute another chemical, the manufacturer must submit notice to the authority that the
36 manufacturer is no longer using the chemical or a substitute chemical.

37 (2) The authority shall establish by rule the methodology that a manufacturer must use and the
38 standards that a children's product must meet in order to comply with the hazard assessment re-
39 quirements described in subsection (1)(a) of this section.

40 (3)(a) The authority shall approve or disapprove a hazard assessment within 180 days after its
41 submittal.

42 (b) If the authority fails to act within 180 days, the hazard assessment is deemed approved, and
43 the manufacturer may continue to sell or offer for sale in this state the children's product for which
44 the manufacturer submitted a hazard assessment[.] **for a period of three years after the date of**
45 **submittal of the hazard assessment.**

1 (c) If the authority disapproves a hazard assessment, the manufacturer may submit a revised
2 hazard assessment for consideration within 180 days after the authority's disapproval.

3 (d) **A hazard assessment approved or deemed approved under this subsection is valid for**
4 **a period of three years after the date of submittal of the hazard assessment. A manufacturer**
5 **must resubmit the hazard assessment at the end of the three-year period.**

6 **SECTION 6.** ORS 431A.265 is amended to read:

7 431A.265. (1) The Oregon Health Authority shall grant a waiver to a manufacturer of children's
8 products that applies for a waiver in order to comply with ORS 431A.260 if the application:

9 (a) Includes an alternatives assessment demonstrating that removal of the high priority chemical
10 of concern for children's health used in children's products is not financially or technically feasible;
11 or

12 (b) Includes a quantitative exposure assessment demonstrating that the high priority chemical
13 of concern for children's health used in children's products is **inaccessible to the consumer or**
14 **otherwise** not reasonably anticipated to result in exposure based upon an analysis of leachability
15 and bioavailability of the high priority chemical of concern for children's health used in children's
16 products.

17 (2) An alternatives assessment or quantitative exposure assessment submitted under subsection
18 (1) of this section must be conducted in a manner consistent with the guidance and frameworks for
19 such assessments in effect on July 27, 2015, and as established by the United States Environmental
20 Protection Agency, the Interstate Chemicals Clearinghouse, the State of California[,] as part of that
21 state's program for reducing toxic chemicals in consumer products, or other states or nongovern-
22 mental organizations with the applicable expertise, or as developed by the authority by rule. The
23 authority may recommend or require that a manufacturer follow particular guidance or frameworks
24 in order to meet the requirements of this section.

25 (3) If the authority determines that an alternatives assessment or a quantitative exposure as-
26 sessment as described in this section is incomplete, the authority may obtain the assessment from
27 another party. The manufacturer that submitted the assessment that was determined to be incom-
28 plete must pay for the assessment performed by the other party.

29 (4) The authority shall approve or disapprove a waiver application within 180 days after its
30 submittal. If the authority fails to act within 180 days, the waiver application is deemed approved,
31 and the manufacturer may continue to sell or offer for sale in this state the children's product for
32 which the manufacturer submitted a waiver application. If the authority disapproves a waiver ap-
33 plication, the manufacturer may submit a revised waiver application for consideration within 180
34 days after the authority's disapproval.

35 **SECTION 7.** (1) **The amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263 and**
36 **431A.265 by sections 1 to 3, 5 and 6 of this 2023 Act become operative on January 1, 2024.**

37 (2) **The Oregon Health Authority may take any action before the operative date specified**
38 **in subsection (1) of this section to enable the authority to exercise, on and after the opera-**
39 **tive date specified in subsection (1) of this section, all of the duties, functions and powers**
40 **conferred on the authority by the amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263**
41 **and 431A.265 by sections 1 to 3, 5 and 6 of this 2023 Act.**

42 (3) **The authority shall begin adopting rules implementing the amendments to ORS**
43 **431A.253, 431A.255, 431A.258, 431A.263 and 431A.265 by sections 1 to 3, 5 and 6 of this 2023 Act**
44 **on the effective date of this 2023 Act.**

45 **SECTION 8.** (1) **The amendments to ORS 431A.258 by section 4 of this 2023 Act become**

1 **operative on January 1, 2025.**

2 **(2) The amendments to ORS 431A.258 by section 4 of this 2023 Act apply to notices con-**
3 **taining the brand name, model and product category of the children's product that contains**
4 **a chemical due to be submitted to the Oregon Health Authority under ORS 431A.258 on or**
5 **after January 31, 2026.**

6 **SECTION 9. This 2023 Act takes effect on the 91st day after the date on which the 2023**
7 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

8
